

# EVENING BULLETIN

Published Every Day Except Sunday,  
at 120 King Street, Honolulu,  
T. H., by the

BULLETIN PUBLISHING CO., LTD.  
WALLACE R. FARRINGTON, Editor

Entered at the Postoffice at Honolulu  
as second-class matter.

## SUBSCRIPTION RATES.

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Per month, anywhere in U. S. . . . \$ .75  
Per quarter, anywhere in U. S. . . . 2.00  
Per year, anywhere in U. S. . . . 8.00  
Per year, postpaid, foreign . . . 11.00  
Weekly Bulletin.  
Six months . . . . . \$ .50  
Per year, anywhere in U. S. . . . 1.00  
Per year, postpaid, foreign . . . 1.50

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MONDAY . . . . . NOV. 16, 1903.

A combination of South and Central American States against the United States would cause joy in Europe, to take the case off the Venezuela fracas if for no other reason.

At the rate the football leaders of Harvard, Yale and Pennsylvania fell by the wayside on Saturday it will be necessary for the athletic members of the universities to do some tall hustling in their preparation for next season.

The series of games completed Saturday by Kauai and Oahu teams gives polo an established place as a leader in inter-island sports. As long as polo players can assure the public of such contents as have been witnessed this year there is no doubt of the attendance being large enough to properly support the game in Hawaii.

According to the morning press prospective Governor Carter should accept no suggestions regarding his appointments; they should be dictated by the morning press. Unless Carter has undergone a remarkable change of character in a few short weeks, he will be his own boss, accepting suggestions from all but dictation from none.

Outside island representation is a problem that will be up to Acting Governor Carter in framing his plans for department heads under his administration. All things being equal the other islands have a right to serious consideration. The complaint has ever been that Honolulu takes everything, and while county government will largely do away with the old time feeling, it will be a gain to the Territorial administration if outside districts are made to feel that they stand on something like an equality with Oahu.

The Ohio Law Journal makes a note of a recent decision under the Chinese exclusion law which, if it is upheld, will have a far reaching effect in this Territory. The Journal says: "The Chinese exclusion law will be virtually nullified if a decision rendered by Judge Wing, in the United States court at Cleveland, Ohio, is sustained. The judge decided that before he could issue an order for the deportation of three Chinese who were before him, charged with being illegally in the United States, that the government must prove beyond a reasonable doubt that the accused were Chinese and not natives of some other country, such as Korea, etc. The officials were not able to prove this and the Mongolians were discharged. Heretofore the courts have held that if the Chinese arrested could not prove he was lawfully in this country he was ordered deported."

## VOTING BY MACHINE.

Hawaii during its elections had heard a great deal of political machinery in its relation to the vote and occasionally suggestions have been offered in favor of voting by machine. From all accounts the voting machine is subject to none of the criticism that invariably falls to the lot of the so-called political machine in its work for the public. Some years ago a sample of the voting machine was sent to Honolulu and exhibited by Mr. Carter. It attracted passing attention, but like all innovations was not seriously considered.

Events of the recent election have renewed the discussion on ways and means for handling the ballot in a manner that will accurately record the ballot of each voter and place it beyond the power of thoughtless or corrupt men to destroy.

The voting machine has been gradually working its way westward, and in the recent San Francisco election was given a test, which, though it was unofficial furnished evidence that the machine-recorded vote is more accurate and rapid than the old man-handled ballot. The machine used in San Francisco was located in one of the largest voting precincts of the city, a general invitation being extended to all voters to test it.

The Chronicle says, editorially, of the experiment:

"The experiment proved that machine voting is not only a time-saving method to the voter himself, but also to the Registrar of Voters in the compilation of the final returns. If the city's entire vote were taken through the agency of voting machines the returns would be all in the hands of the Registrar and the official count announced within less than two hours after the close of the polls. In fact, the period of suspense would be gov-

erned solely by the time consumed in conveying the record of the vote of the remotest precinct to the Registrar's office and that of the necessary tabulation for totals. While the machine vote of Tuesday was in his hands five minutes after the polls closed, it would have taken nearly twenty-four hours to have counted the same number of ballots in some precincts by the present method of voting.

"The economy of the voting machine was also exemplified in the fact that it needed no party watchers. These are now required at each polling booth. There were, consequently, 999 party watchers at the 320 precinct polling booths during Tuesday's election, whose employment represented a cost of nearly \$10,000. Then, again, the voting machine dispenses with the services of election clerks, which is another big saving. It would not require many elections, therefore, to save the entire cost of the machines, if adopted. For economical reasons it is obvious that they should displace the present system of voting. Besides the public want them."

Experience in eastern cities where the voting machine is used officially bears out the unofficial test of San Francisco, and although the machine is making headway slowly it seems to fill a long-felt want. It is not likely Hawaii will take to the new departure more speedily than mainland communities. The project has sufficient worth, however, to warrant the advisability of preparation for an unofficial test next year, when it will be possible to make a trial which will not be forgotten before the meeting of the Legislature.

## COMPLAINANT IS NOT AN ABUTTER

Difficulty Construing Legal Phrase "In Compromise."

## SUPREME COURT DECISION IN SMITH VS. ROSE ET AL

EACH JUSTICE WRITES HIS OPINION — DECREE APPEALED FROM REVERSED—BILL IS DISMISSED.

The Supreme Court this morning rendered a decision in the matter of Henry Smith v. Mary A. S. Rice and Sanford B. Dale, as Governor of the Territory, appeal from first circuit court.

Says the syllabus: The complainant is not an abutter within the terms of section 354, Civil Laws, and has no right to demand that the land embraced in the abandoned street be first offered to him, at a reasonable price, prior to its sale to another. Held, that under the facts of the case the decree appealed from should be reversed and the bill dismissed.

Justice Galbraith, writing the opinion of the court, says in part: This is a bill in equity filed by the complainant, Smith, seeking the cancellation of a deed executed by the Governor of the Territory conveying to the respondent, Rose, a part of an abandoned street or lane. The land conveyed was triangular in form and contained an area of 1930 square feet. The Circuit Judge found for the complainant and decreed cancelling the deed as prayed. The respondents appealed.

While the bill alleges fraud in the execution of the deed the complainant relies in the main on his assumed rights as an abutting owner under section 354 Civil Laws, to have the abandoned street offered to him a reasonable price prior to the sale to the respondent and the failure of the Territorial officials to make such offer. It was decided that Smith was an abutting owner.

It seems to have been conceded by all of the parties that the title to the land conveyed vested in the Territory under section 354, although the record shows that the land was not "taken for a highway or improvements under this Act" and that no proceedings were had to vacate or abandon the "highway" as provided in this act and that the "highway" or foot path of which this land formed a part was abandoned by those who were accustomed to use it prior to the passage of "this Act" in 1892. And it was also assumed that the Governor had the right to convey the land under section 354. While these assumptions are not free from doubt and may be entirely unfounded, in fact and in law, for the purposes of

this case, we shall assume them to be true.

Under the issues presented there is but one difficulty in deciding this case, namely, to determine the proper construction to be placed on that part of the section providing that in case the land embraced in the abandoned highway shall be sold by the Territory "it shall be first offered to the abutters in compromise, for a reasonable price," etc. If the phrase "in compromise" were eliminated the difficulty would vanish and the meaning would be plain.

The construction adopted by the Circuit Judge treats the phrase "in compromise" as meaningless and the section as meaning exactly what it would if those words had been omitted. We cannot approve of this construction since we are bound to assume that the legislature had some purpose in inserting the words. The position of the phrase in the sentence seems to warrant the inference that it was used to express the purposes of making the offer and to limit the abutters who were given the right to demand the offer be made. All abutters on an abandoned or vacated street were not given the right by this statute to demand that the land be offered first to them at a reasonable price before being sold. It was only such abutters as might be injured by the vacation of the highway and thus have a claim for damages against the Territory and whose claim for such damages might be settled or compromised by such offer and a sale in pursuance thereof. To the abutter who was not damaged it would be impossible to make an offer "in compromise." He would have nothing to compromise with the Territory for the reason that he was not injured by its acts.

This interpretation does not mean that the land shall be offered to the injured abutter at a reasonable price in exchange or settlement of a claim for damages that an abutter may have on account of the vacation of a street or that the amount of such claim for damages shall be estimated by the Superintendent of Public Works and credited on the price of the land. This of course would be within one meaning of the word "compromise" but the word in this statute is undoubtedly used in another sense, namely, as "an agreement or compact adopted as a means of superceding an undetermined controversy." Cent. Dic.

The Legislature, by virtue of its general power over the highways of the state, may, as we have said, undoubtedly order the vacation of such of them as it may deem expedient to vacate, but where the vacation of a highway will cause special injury to an adjoining owner he is entitled to compensation. Of two abutting owners on an abandoned highway, one has the same free and convenient access to his premises after as before the vacation while the access of the other to his premises is entirely cut off. No offer in compromise could be made to the first for the reason that he has sustained no injury and has nothing to compromise with the Territory but between the latter and the Territory there exists "an undetermined controversy" on account of his property taken and his right destroyed by the abandonment of the street. The latter is the abutter to whom the land must be offered before sale and the former although an abutter is not within the terms of the statute and has no right under it.

By the offer in compromise to Mrs. Rose and her acceptance she obtained an outlet to the highway and her claim for damages that would have accrued had the land been sold to complainant or any other person was "superceded," i. e., "displaced, supplanted, set-aside, suspended, stayed." The conveyance to her may properly be called, "an agreement or compact adopted as a means of superceding an undetermined controversy." This was the direct effect of the sale to her and in this sense the land was offered to her "in compromise" and she was the only person who was entitled under the statute to such an offer.

The bill should have been dismissed for want of equity. The decree appealed from is reversed and the cause remanded to the Circuit Judge with direction to dismiss the bill and for such further proceedings as may be proper.

E. C. Peters for complainant.  
J. W. Cathcart for the Governor.  
Kinney, McClanahan and Bigelow for Mrs. Rose.

Chief Justice Frear, concurring, says, in brief:

I concur in the foregoing conclusion, but express no opinion as to the significance of the words "in compromise" in the statute, except that the construction of those words contended for by the plaintiff, to the effect that they require the entire land (e. g., a long street that is closed) to be offered as a whole to all the abutters to be divided among themselves in compromise with each other, clearly cannot be sustained. That construction would violate both the language

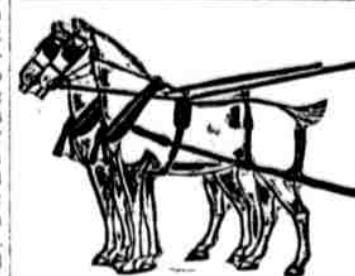
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and the spirit of the section and be unreasonable and impracticable. The words "in compromise" in this section are to say the least used somewhat loosely and their meaning is very obscure.

The whole transaction cannot be set aside merely because the Superintendent of Public Works may not have divided the land exactly as the court would. Some room must be left for the exercise of discretion in the execution of the details. No better mode of division than that made has been suggested to the court, and it is not clear that there is any better or fairer.

Justice Perry, concurring, says, among other things: I concur in the conclusion that the bill should be dismissed. In my opinion the offer contemplated in Section 354 is to be made to all of the abutters whoever the class so designated may include, that is to say, to each of the abutters the portion on

which his land abuts. The words "in compromise" do not, as I think, limit the class of abutters to whom the offer is to be made, but are to be read and understood as though inserted immediately after the word offered, i. e., they were intended to show the nature or the object of the offer and not to describe the permitted purchasers at private sale.

The annual meeting of the stockholders of the Wilder Steamship Company was held this morning at 10 o'clock. Reports were read and the officers of the past year re-elected to serve for the ensuing year.

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